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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,712	06/22/2000	Timothy E. Dickson	2400-370	8765
27820	7590	11/03/2003	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C.				GORT, ELAINE L
P.O. BOX 1287				ART UNIT
CARY, NC 27512				PAPER NUMBER
				3627

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/599,712	DICKSON, TIMOTHY E.
Examiner	Art Unit	
Elaine Gort	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 02 October 2003.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-7 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 and 13-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7 and 13-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point-out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what is being claimed in regard to the limitations presented after the word "optionally" in claims 1, 3, 5, 7, 13, and 14. These limitations are not positively recited.

It is unclear in claim 13 as "as sensor" is claimed in line 5 and line 19. It is unclear if there is one or two sensors being claimed.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-7, 13-15 and 19-20 rejected under 35 U.S.C. 102(e) as being anticipated by Nusbaumer et al. (US Patent 5,944,069).

Nusbaumer et al. discloses the claimed fuel dispensing system. Nusbaumer et al. discloses a fuel dispensing system with a system controller configured to produce an accounting of each fuel dispensing transaction associated with the dispensers and customers, each transaction having associated therewith an unique indicia (such as the control system operating the fuel dispensers with the associated accounting system which accounts for each transaction that has associated unique indicia such as pump id, vehicle id, user id, time, date, etc.);

Fuel dispensers (such as dispensers used to fuel locomotives as discussed in column 6 lines 5+) in data transfer communication with the controller, configured to dispense fuel, not having a receipt printer (see figures 2, 4, and 5) and adapted to receive payment for a fueling transaction (payment information is entered when identification of the locomotive and personal id code is entered); and

A fuel dispensing transaction accounting delivery station in data transfer communication with the system controller, and located remotely from the dispensers which are configured to optionally deliver a transaction accounting associated with the

fueling transaction to the customer, based on the indicia (such as at the central data terminal and the railroad's accounting where the transaction data is used for accounting and provided based on customer indicia and an operator may provide any transaction in hardcopy format using a printer, see reference 150 in figure 1, and column 6 lines 35+).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nusbaumer et al.

Nusbaumer et al. discloses the claimed device but is silent on the topics of tokens and biometric sensors. Examiner takes official notice that tokens and biometric sensors are notoriously old and well known in the art of security to prevent fraud by identifying users. It would have been obvious at the time of the invention for one of ordinary skill in the art to utilize tokens and/or biometrics in the system of Nusbaumer et al. to prevent fraudulent use of the system.

***Response to Arguments***

7. Applicant's arguments filed 10/02/03 have been fully considered but they are not persuasive.

Applicant has argued that Nusbaumer et al. does not disclose the customer performing the fueling transaction being able to receive a transaction accounting. Examiner contends that Nusbaumer et al. does disclose the customer receiving a transaction accounting, when the customer being the railroad or other company using the system to fill locomotives and to obtain accounting information. For example the railroad obtains accounting information via the central data terminal as described in column 6, lines 35+. The claim does not limit the customer to be only the truck driver and therefore the railroad's truck and their accounting department represent the customer. Examiner further contends that the limitation of "delivering a transaction accounting associated with the fueling transaction to the customer" is not a required limitation as the limitation is prefaced with the term "optionally" which makes the limitation not required/essential.

Applicant has argued regarding claim 3 that Nusbaumer et al. does not disclose were the customer is provided with indicia that can subsequently be entered at the remote transaction accounting delivery system. Examiner contends that the limitation of "inputs said indicia at said separately located transaction accounting delivery station to obtain a transaction accounting" is not a required limitation as it is prefaced with the term "optionally" which makes the limitation not required. For example the option of it not being entered is selected.

Applicant has argued regarding claim 5 that Nusbaumer et al. does not disclose were the customer receives the accounting remotely in response to positioning their vehicle proximate to the delivery station. Examiner contends that the limitation of

"receives a transaction accounting in response to positioning customer's vehicle proximate to said transaction accounting delivery station" is not a required limitation as this limitation is prefaced with the term "optionally" which makes the limitation not required. For example the option of it not being positioned to the station is selected.

Regarding claims 7 and 14, Examiner contends again that the customer is the railroad or other company purchasing via the system and receives accounting records via the central data terminal. For example see column 6, lines 35+. Also regarding claim 14, Examiner further contends that the limitation of "delivered to the customer if the customer is identified at said transaction accounting dispensing facility, the transaction accounting data being transferred from said control and transaction processing unit" is not a required limitation as the limitation is prefaced with the term "optionally" which makes the limitation not required/essential.

Regarding claim 15, Applicant has argued that Nusbamer et al. does not disclose where the customer being identified is performed by interrogating a transponder associated with the customer's vehicle. Examiner provides the definition of a transponder for clarification. Transponder: a radio or radar set that upon receiving a designated signal emits a radio signal of its own and that is used especially for the detection, identification, and location of objects. (Merriam Webster's Collegiate Dictionary, 10<sup>th</sup> Ed. 1996). Examiner contends that Nusbamer et al. discloses throughout the reference that the system uses a transponder to identify both loading and unloading vehicles. See column 6, lines 11+.

Regarding claim 13, Examiner provides the definition of a sensor for clarification. Sensor: a device that responds to a physical stimulus (as heat, light, sound, pressure, magnetism, or a particular motion) and transmits a resulting impulse (as for measurement or operating a control). (Merriam Webster's Collegiate Dictionary, 10<sup>th</sup> Ed. 1996). Examiner points out that the accounting office of the railroad requesting information from the central data terminal has a "sensor" in that they have a computer that responds to physical stimulus, such as pressure/motion on a key board, and transmits a resulting impulse to the system for accounting information.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

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EG



October 24, 2003



10/31/03

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